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Chapter Number and Title: 11.22 2012-13 Closures (11) Muscongus Area, (12) Southeast Harbor and (13) East Moosabec Reach. Emergency regulations

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NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: 11.22 2012-13 Closures (11) Muscongus Area, (12) Southeast Harbor and (13) East Moosabec Reach. Emergency regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure located in the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. A significant immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area as authorized by 12 M.R.S.A. §6171(3).

EFFECTIVE DATE: **December 22, 2012**

AGENCY CONTACT PERSON: **Trish De Graaf (207-624-6554)**
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DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.22 2012-13 Closures

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for Mussel Ridge (6) which shall be open during the month of December in accordance with the dates specified in section 11.09. All directions are relative to True North (not magnetic).

Transiting exception:
Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) Upper Chandler Bay
Northern boundary: South of a line starting at the Roque Island Cable Area between Jonesport and Roque Island.
Southern boundary: North of a line starting at the most southeastern tip of Sandy River Beach to the most southern tip of Bar Island, continuing to the most southern tip of Ballast Island; then continuing to the most southern tip of Bonney Point, Roque Island.

(2) Mud Hole Channel
Northern boundary: South of a line drawn from the most eastern tip of Mud Hole Point, Great Wass Island to the most western tip of Crow Point, Head Harbor Island.
Southern boundary: North of a line from the most eastern tip of Little Pond Head, Great Wass Island to the most southern tip of Freeman Rock, then continuing on to the most southern tip of Mistake Island, continuing from the most eastern tip of Mistake Island to the most southern tip of Steele Harbor Island; then from the northern end of Great Herring Cove, Steele Harbor Island to the most southern tip of Man Island.

(3) Moosabec Reach
Eastern boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.
Western boundary: East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.

(4) Inner Harbor/Deep Hole
West of a line drawn from the most western point of Whitmore Neck, Deer Isle due True North to the South shore of Mountainville, Deer Isle at Latitude 44 12.407 N Longitude 068 38.819 W.

(5) Blue Hill Salt Pond
All waters of the Blue Hill Salt Pond.

(6) Mussel Ridge
Eastern boundary: West and South of a line drawn from the most eastern tip of Ash Point, South Thomaston at Latitude 44 02.805 N Longitude 069 04.393 W to RW “PA” Mo (A) GONG at; then continuing southwest to the northern tip of Two Bush Island.
Western boundary: North of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island.

(7) Ocean Point
West of a line drawn from Emerson Point, at the southern most tip of Ocean Point, Boothbay at Latitude 43 48.852 N Longitude 069 35.454 W, to the most northern tip of Fisherman Island, then continuing to R N “8” AND East of a line draw from R N “8” to the most southwestern tip of Ocean Point at Latitude 43 48.874 N and Longitude 069 36.332 W.

(8) Eastern Casco Bay
Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G “3”, South of Round Rock; continuing in a southwesterly direction to R N “4” at Drunkers Ledges.
Western boundary: East and North of a line draw from R N “4” at Drunkers Ledges to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude 43 42.950N Longitude 70 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43 43.043N Longitude 70 00.128W.

(9) Hussey Sound
Northern boundary: South of a line draw from the most northern tip of Diamond Cove, Great Diamond Island at Latitude 43 41.047 N Longitude 070 11.311 W, East to the most western top of Long Island at Latitude 43 41.011 N Longitude 070 10.369 W.
Eastern boundary: West of a line drawn from the most southern tip of Jerry Point, Long Island to the most northeastern tip of Peaks Island at Latitude 43 39.801 N 70 10.622 W.
Southern Boundary: North of a line draw from the most northwestern tip of Peaks Island at Latitude 43 40.403 N 070 11.237 W to the eastern shore of Great Diamond Island Latitude 43 40.547 N Longitude 070 11.528 W.

(10) Inner Blue Hill Harbor
West of a line drawn from the most western point of Sculpin Point, Blue Hill to the closest point of land on Parker Point, Blue Hill Neck.

(11) <u>Muscongus Area:</u>
<u>North and east of a line beginning at the intersection of Latitude 43º 55' N on Pemaquid Neck (just north of Brown’s Cove, Bristol), and following this latitude to a point directly South of Marshall Point, Port Clyde at Latitude 43 54.84 N Longitude 69 15.60 W then due North to the most southern tip of Marshall Point, Port Clyde.</u>

(12) <u>Southest Harbor:</u>
<u>North of a line starting at the most southwestern tip of Stinson Neck, Deer Isle running west to Coles Point on Whitmore Neck, Deer Isle; this includes all of Southeast Harbor.</u>

(13) East Moosabec Reach:
East of the Jonesport-Beals Island bridge and west of a line starting at the western end of the breakwater in Sawyer's Cove to the most western end of Pig Island and then due south to the closest point of land on Great Wass Island.

This regulation, Chapter 11.22, expires March 31, 2013.

Basis Statement

Chapter 11.22 2012-13 Closures (11) Muscongus Area, (12) Southeast Harbor and (13) East Moosabec Reach Emergency regulations

Justification:

Maine scallop landings have declined precipitously from a peak of nearly 4 million pounds in 1980-1981 to less than a half million pounds each year since 2001 (Figure 1). In 2009, due to the fact that scallop populations throughout the state were at extremely low levels, the Department enacted a series of Closed Areas to allow the resource to rebuild. These Closed Areas, now called Limited Access Areas, re-opened this season to harvest. In 2011, all the Limited Access Areas were surveyed to provide a biomass estimate of the harvestable poundage of scallops available in each area. As part of the rebuilding plan, a trigger mechanism was included during rulemaking that would ensure that the biomass in these Limited Access Areas would be sustainably harvested to ensure rebuilding can continue while allowing for a limited fishery to occur in these areas. The trigger mechanism was designed to close the Limited Access Areas when there was a likelihood that 30-40% of the harvestable biomass had been removed. Based on Marine Patrol observations and industry reports, the 30-40% threshold has been exceeded in three of the Limited Access Areas. The areas that have experienced the highest amount of fishing pressure have been depleted. These areas include the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach. These closures are needed to ensure that there is enough biomass left to provide the critical mass of scallops for successful recruitment and spawning, thus ensuring that rebuilding continues.

In the Muscongus area, during the first week of December, eight vessels fishing in the area were easily able to land their limit by 10 a.m. During the second week of December, effort increased to a total of 24 vessels fishing the area. However, catch rates had already decreased, indicative of resource depletion, with the majority of vessels landing their daily limit between 12 noon to 3 p.m. During the third week of December, foul weather prevented some of the active fleet from fishing. However, of the eight boats fishing, less than half were able to land their limit while many of the vessels had to prospect in search of scallops, as the majority of the area had already been worked over. Since drag efficiency is 30% resulting in the removal of 30% of the biomass with each sweep, the trigger mechanism threshold has been met. In addition, the catch per unit effort decrease is indicative of resource decline. Finally, the 2011 DMR fall survey observed a disproportional amount of legal sized scallops in this area compared to sub-legal scallops. This is of concern as it indicates there is only one year class that makes up the biomass in this area and should it be fished to depletion this season, there will be no product left for the fleet to fish on in future years, or to provide successful spawning and rebuilding in the area. Therefore, an immediate conservation closure of the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area where the resource has been depleted beyond the 30-40% trigger is needed, while the West Penobscot Bay portion of the area will remain open for harvest opportunities.

In the Southeast Harbor area, during the first week of December, five vessels fishing in the area were easily able to land their limit by 10 a.m. During the second week of December, effort increased to a approximately 30-40 vessels fishing this small area, due in part to the re-distribution of effort from the Blue Hill Bay Limited Access Area where a portion of the area had been closed the week before. By the end of the day, the area had been depleted. However, some vessels were able to attain their daily limit. In the third week of December, approximately 15 vessels fished this area with none reporting being able to land their daily limit. Therefore, an immediate conservation closure of the Southeast Harbor portion of the Eastern Penobscot Bay Limited Access Area where the resource has been depleted beyond the 30-40% trigger is needed, while the Eggemoggin Reach portion of the area will remain open for harvest opportunities.

During the first week of December, in the East Moosabec Reach area 17 vessels fishing were easily able to land their limit by 10 a.m. During the second week of December, effort increased to approximately 32 vessels fishing this small area due in part to the re-distribution of

effort from the Blue Hill Bay Limited Access Area, where a portion of the area had been closed the week before. It took some vessels twice the amount of time the second week to land their daily limit (around 2 p.m.) Some vessels were not even able to land their daily limit. A number of the vessels resorted to leaving this area to prospect other sections of The Reach Limited Access Area in order to obtain their daily limit. During the third week of December, due to foul weather only 9 vessels set out to fish with the majority coming in early with less than half their daily limit. Therefore, an immediate conservation closure of the Moosabec Reach portion of The Reach Limited Access Area where the resource has been depleted beyond the 30-40% trigger is needed, while the western portion of the area will remain open for harvest opportunities.

The Department is concerned that continued harvesting during the remainder of the 2012/2013 fishing season in the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area will deplete the harvestable biomass far beyond the 30-40% goal for removal and may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area.

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area to be closed as authorized by 12 M.R.S.A. §6171(3). In accordance with 5 M.R.S.A. §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's office, State House station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

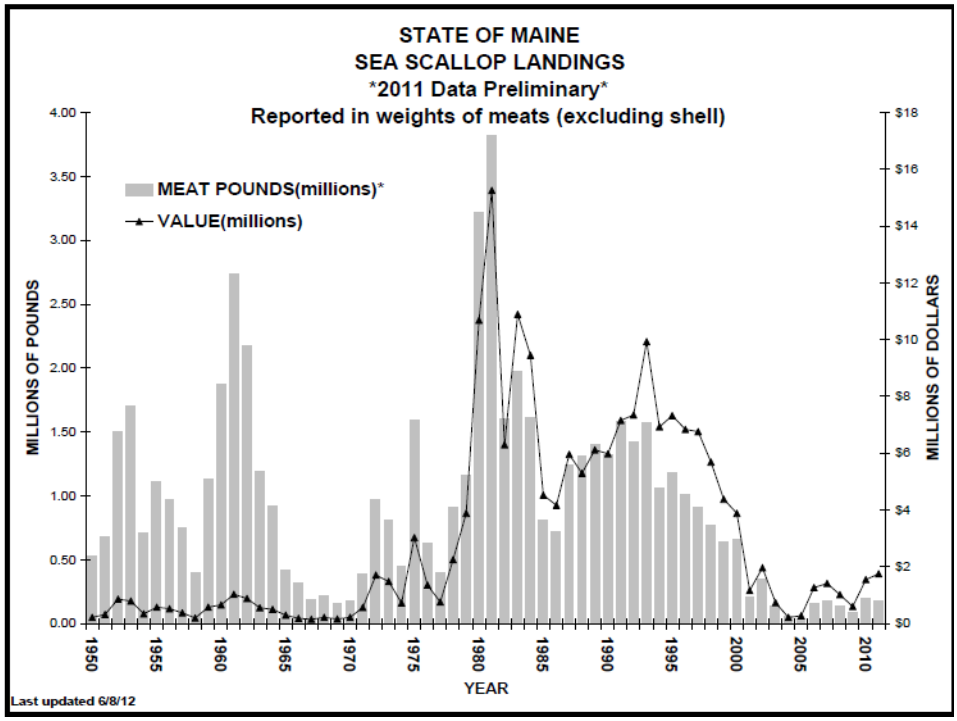

Figure 1. Maine scallop landings from 1950 to 2011.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:
Kevin Rousseau, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; E-mail: kevin.rousseau@maine.gov, web address: http://www.maine.gov/dmr/rulemaking/

CHAPTER NUMBER AND RULE: Chapter 11.22 2012-13 Closures (11) Muscongus,Area (12) Southeast Harbor and (13) East Moosabec Reach. Emergency regulations

STATUTORY AUTHORITY: 12 M.R.S.A. §6171(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure located in the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. A significant immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Muscongus portion of the Muscongus/West Penobscot Bay Limited Access Area, the Southeast Harbor portion of the Eastern Penobscot Limited Access Area and the Eastern Moosabec Reach portion of The Reach Limited Access Area as authorized by 12 M.R.S.A. §6171(3).

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

FISCAL IMPACT OF THE RULE:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Rulemaking statement of impact on small business
5 MRS §8052, sub-§5-A and §8053, sub-§3, ¶F, and
Executive Order 20 FY 11/12, August 24, 2011 (replaces EO's 09, 13 & 14)

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 11.22 2012-13 Closures (11) Muscongus Area, (12) Southeast Harbor and (13) East Moosabec Reach. Emergency regulations

1. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule; and EO20 1.A. The impact of the proposed rule on job growth or creation:

Approximately 580 individuals are eligible to apply for a 2013 Maine commercial scallop dragger harvesting license and 55 individuals are eligible for the commercial scallop diver license. 45 individuals held a scallop with tender license in 2011. It is anticipated that the majority of these individuals will obtain the license in the 2013 season. Non-commercial licenses are not limited. In 2012, 91 non-commercial scallop licenses were issued. The 2013 number will likely be similar.

2. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; and EO20 1.C. The cost to the public in terms of time and money required to comply with the rule and EO20 1.B. The burden imposed by any fees included in the rule:

There are no additional reporting, record-keeping, fees or other administrative duties associated with this emergency scallop conservation area closures rule.

3. A brief statement of the probable impact on affected small businesses; and EO20 1.D. The extent to which other laws and regulations already address the subject matter of the rule:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

4. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule; and EO20 1.E. The relevant Federal standards, if any and the specific need for Maine's rules to differ from them if such a need exists:

The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry by increasing the likelihood of a speedy recovery of Maine's scallop resource. In the short-term, harvesters and the businesses that purchase scallops have already seen a decrease in landings and therefore these measures are considered necessary. There are no federal regulations that apply in this case.

5. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained: Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.